Supreme Court, U.S.
FILED
JAN 18 2000
CLERK

(3)

No. 99-990

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH SPENCER,

Petitioner,

v.

KNAPHEIDE TRUCK EQUIPMENT COMPANY, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDINGS

The Parties in this proceeding are the Board of Police Commissioners of the Kansas City, Missouri, Police Department, through its Members, Dr. Stacy Daniels, in her official capacity as Vice President, Board of Police Commissioners, Jeffrey J. Simon, in his official capacity as Treasurer, Board of Police Commissioners, Joseph J. Mulvihill, in his official capacity a member of the Board of Police Commissioners, Emmanuel Cleaver, in his official capacity as ex officio member, Board of Police Commissioners and Mayor of City Kansas City, Misssouri and Knapheid Manufacturing Company. The Knapheid Defendants are no longer parties in this action because their cases have been settled.

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PETITIONER'S REPLY ARGUMENT

RELEVANCE OF EVIDENCE AND DISTRICT COURT FINDINGS REGARDING THE HISTORY AND DESIGN PROCESS INVOLVED IN THE MANUFACTURE OF THE PADDY WAGONS

The Board, in their Brief in Opposition, state that the Board's bidding process and the District Court's findings regarding the Knapheide defendants are not important or before this Court. In so arguing, they misconstrue the basis of Spencer's argument. This bidding process and Knapheide's role in the manufacture of the wagons are fundamental elements of Spencer's complaint. It is a documented fact that the Board of Police Commissioners issued bid invitations to all Kansas City Truck Service Body Manufacturers in the years of 1979, 1980 and 1981. These bid invitations contained precise specifications for the paddy wagons which were to be built. Those specifications covered all aspects of the wagons, from its precise dimensions to the materials which were to be used in it's construction and the method of undercoating and painting the body. Ultimately the wagons were built to those exact specifications. The specifications did not include seatbelts or any other provisions for the safety of the persons who would be transported therein. The wagons built to those specifications did not contain seatbelts or other provisions for safety. The District Court found that the lack of seatbelts was a violation of the Federal Motor Vehicle Safety Standards, if

the wagons were designed to transport ten or less persons. From these facts, it is clear that, if the wagons were designed to carry less than ten persons, the Board of Police Commissioners was directing Kansas City Truck Service Body Manufacturers to violate the Federal Motor Vehicle Safety Standards in constructing the wagons.

It is Spencer's position that the Board's conduct gives rise to liability under 42 U.S.C. 1983 which provides:

> *"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."*

The Board subjected or caused Spencer to be subjected to the deprivation of his rights secured by the Federal Safety Standards and, as a result he was rendered quadriplegic.

The Board suggests that Spencer is urging the Court to adopt some lower standard of culpability than "deliberate indifference". That is not the case. What they fail to grasp is that deliberate indifference can be demonstrated in different ways, and has somewhat different elements of proof under the Eighth Amendment, than under the Fourteenth Amendment. It is Spencer's contention that the standard of culpability,

deliberate indifference, is met when a 1983 plaintiff demonstrates that his injury, resulted from a municipal entity's violation of Federal law.

PETITIONER'S REPLY TO ALLEGATIONS OF MISSTATEMENTS OF FACTS

The Board's involvement in the design and manufacture of paddy wagons, that failed to meet the Federal Motor Vehicle Safety Standards, is not the sole basis for his contention that the Board acted with deliberate indifference to his constitutional rights. There are other facts which demonstrate that level of culpability. In Spencer's Petition, Spencer points out the history of injuries in the wagons and the failure of the Board to take reasonable remedial action. Spencer stated that after six injuries, the Board promulgated directives for officers to seat prisoners at the front of the wagons and to drive carefully, and then did nothing after injuries continued to accrue. The Board, in it's Brief In Opposition, disputes that fact and argues that the Board attempted remedial action in 1991, just prior to Spencer's injury, and that Spencer was the first injury after the action was taken. The Board's Procedural Instructions, submitted as evidence in this case, clearly show that is not correct. While it is true that the section of procedural instructions entitled "ONE-OFFICER CAR PROCEDURE" was reviewed and updated in 1991, the section which addressed use of the patrol wagons was left unchanged from it's 1984 form. These documents are a matter of record in the case. Procedural Instruction 84-9, issued on 8-9-84, under the section "Use of

the Patrol Wagon", states:

1. When possible and convenient, the patrol wagon should be used for the following types of prisoners:
   a. Intoxicated persons.
   b. Combative persons.
   c. Mentally disturbed persons.
   d. Persons arrested for serious crimes.
   e. In every case where the security or safety of the officer or prisoner is threatened.
   f. Large groups of prisoners.

b. Officers operating the patrol wagon shall:
   (1) Drive in such a manner as to not injure prisoners.
   (2) Advise prisoners to sit at the front of wagon or on the floor.
   (3) Advise prisoners to use caution when entering the wagon.
   (4) Place on the floor of the wagon any prisoner whose physical condition would not permit them to protect themselves from falling or being thrown against the side of the wagon.

c. Juveniles and adult prisoners, or prisoners of opposite sex, shall not be transported together if there is a possibility of harm occurring to any of the arrested persons or if custody is for non-related incidents.

d. Prisoners who have been assaulting each other will not be transported together in the back of the patrol wagon.

e. Immediately after transporting any prisoner in the back of a patrol wagon, the interior of the prisoner's compartment shall be physically searched for contraband or evidence.

Procedural instruction number 91-13, issued on 5-21-91, entitled One-Officer Car Procedures, under subsection B. 2, entitled Use of the patrol wagon/van, states:

a. When possible, the patrol wagon/van should be used for the following types of prisoners:
   (1) Intoxicated persons.
   (2) Combative persons.
   (3) Mentally disturbed persons.
   (4) Persons arrested for committing serious crimes.
   (5) When the security or safety of the officer or prisoners is threatened.
   (6) Large numbers of prisoners.

b. Officers operating the patrol wagon/van will:
   (1) Not transport juveniles and adult prisoners, or prisoners of the opposite sex, in the same compartment if there is a possibility of harm occurring to any of the arrested persons or if custody is for non-related incidents.
   (2) Not transport prisoners together who have assaulted each other.
   (3) Advise prisoners to use caution when entering the wagon.

(4) Advise prisoners to sit at the front of the wagon or on the floor.

(5) Place on the floor of the wagon any prisoner whose physical condition would not permit them to protect themselves from falling or being thrown against the sides of the wagon.

(6) Drive in such a manner as to injure prisoners.

(7) Immediately after transporting any prisoner, physically search the interior of the prisoners compartment for contraband or evidence.

As previously stated, the 1991 procedural instruction was merely a republication of the 1984 procedural instruction. It was republished as a part of a general review of all the Board's procedural instructions. As Spencer stated in his Petition For Writ of Certiorari, the Board recognized the danger that the wagons posed to prisoners and took remedial steps in 1984, after six injuries had occurred. Despite the fact that eight more injuries occurred after the remedial action, the Board did nothing further. Spencer's quadriplegic injury was the ninth after the remedial effort was taken. Spencer contends that this history is more than adequate to raise a jury question as to the Board's deliberate indifference, such that summary judgement was inappropriate. Even if the facts were as the Board suggests, and Spencer had been the first injury after the Board's remedial effort, the issue of the reasonableness of the effort would be a jury question.

The Board suggests that this Court should disregard

the history of injuries because they are unsubstantiated or unverified. If they are, it is because the Board did not substantiate or verify them. The Board fails to mention that these reports of injury were made directly to the Board's Office of Citizen Complaints. This history was reconstructed from the Board's own records. If any assumptions should be made about this evidence, it should be that this evidence is merely the tip of the iceberg.

The Board has attacked several other of Spencer's factual allegations. Spencer stated that no one checked to see if the Board's specifications for the paddy wagons complied with the Federal Safety Standards. On page 5, of the Board's Reply, the Board seems to take issue with that fact. It is true that the head of the project, Captain Robert McAtee, testified in his deposition that he had told Phil Carrot, of Knaphiede Manufacturing, that the Department did not want seat belts in the wagon, but that if State or Federal Regulations required them, the Department would want to comply. It is also true that Phil Carrot testified, in his deposition, that Captain McAtee had adamantly refused to have seat belts in the wagons, and that no one at Knaphiede manufacturing checked for compliance with Federal Safety Standards, because it was a moot point after his conversation with McAtee. (Carrot deposition p. 62-67) The net result of this, is that no one checked to see if the Board's specifications complied with the Federal Standards.

The Board's Reply Brief also attacks Spencer's statement that no consideration was given to prisoner safety

when the wagons were manufactured. The Board cites the remedial efforts that they made in 1984 as proof of the Board's concern for prisoner safety. This misses the point. Spencer contends that no consideration was given to prisoner safety at the time that the wagons were designed and manufactured. This goes to his first allegation of deliberate indifference, of failing to comply with the Federal Standards, and engaging in the manufacture of wagons that were dangerous, not to his second allegation of deliberate indifference in failing to take reasonable remedial effort to prevent further injuries. The Board's statement, that the failure to put seatbelts in the wagons was itself a safety consideration, is impressive lawyering, but it does not explain the total absence of provisions for the safety of the of the prisoners that would be transported. The wagon was a steel box on wheels, with no handholds, padding, passive restraints or compartments to prevent prisoners from being thrown against the walls and bulkhead.

The Board denies that the wagon was totally their design and sites evidence that Knaphiede was involved in the design process, and that prior to the Knapheide's involvement, other companies had bu'lt similar wagons for them. There is evidence that the Board had used similar wagons in the past, built by other manufacturers. It is true, however, that the head of the project from 1979 to 1980, the date when Spencer's wagon was manufactured, testified that he inherited the project without any file or plans from previous designs, and came up with his design by consulting with local truck body

manufacturers. He may have been reinventing the wheel, or he may have had poor recall. It really makes no difference. When the Board promulgated it's precisely specified bid invitation to all manufacturers in the community, the design became theirs, and the people that built it were merely contractors building to specifications. If the wagons were copies of a design made at some earlier date for the Board, there was no guarantee that those specifications met current Federal Safety Standards. Safety belts were not required by the Federal Motor Vehicle Safety Standards until 1973. If the wagons were going to incorporate those features mandated by the Federal Motor Vehicle Safety Standards from1979 to1981, those features needed to be included in the specifications put out for bid at that time. The Board of Police Commissioner's invitation to bid was an invitation for the these manufacturers to violate the law.

REASONS TO GRANT CERTIORARI AND CONCLUSION

The Board, in it's Reply Brief, states that Spencer has not stated any compelling reason for this Court to exercise it's jurisdiction and grant his Petition. As Spencer stated in his Petition, both the District Court's opinion and the Eighth Circuit Court of Appeal's decisions conflict with this Court's holdings in *Farmer v. Brennan,* 114 S.Ct. 1970 (1983), *City of Canton Ohio v. Harris*, 489 U.S. 378 (1989) and *Board of County Commissioners v. Brown*, 117 S. Ct. 1382 (1997). In addition Spencer's case presents an important question of Federal Law which has not been, but should be decided by this

Court; What is the liability of a municipal entity which engages in the design and manufacture of motor vehicles which do not meet the Federal Motor Vehicle Safety Standards. The Board also repeatedly refers to Section 1983 law as being well settled, such that review of Spencer's case would not be beneficial to all the Circuits. With all due respect to the Courts and the Board, Spencer's Counsel finds 1983 law to be as clear as mud. This view also seems to be shared by some of the Justices dissenting in *Board v. Brown*.

The Board suggest that Spencer's case only alleges the misapplication of a properly stated rule of law. It is Spencer's position that his case was not decided under a properly stated rule of law. The statement of law which was used to decide this case is set forth on page 14a, paragraph 3, of Spencer's Petition. It is a combination of standards appropriate for Eighth Amendment cases and those cases raising issues of respondeat superior, and not properly stated rules of law governing Spencer's case.

For all of these reasons and for the reasons set out in Spencer's Petition For Writ Of Certiorari, Petitioner prays this Court grant his Petition and hear this important case.

Respectfully submitted,

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